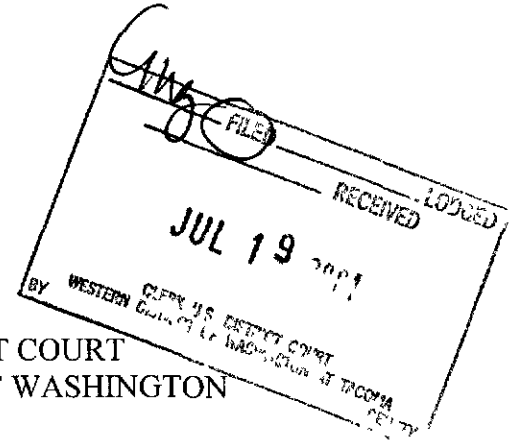


Honorable Franklin D Burgess



UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RODERICK C MANN,  
Plaintiff,  
v  
AMERICAN AIRLINES,  
Defendant

Case No C00-5641-FDB

**DEFENDANT'S REPLY BRIEF IN  
SUPPORT OF MOTION TO DISMISS**

**INTRODUCTION**

Plaintiff's action must be dismissed because he admittedly did not serve his complaint within the 120-day period required by Rule 4 of the Federal Rules of Civil Procedure. Moreover, by the time Plaintiff moved this Court *ex parte* (despite Plaintiff's admitted knowledge of the identity of Defendant's registered agent for service of process)<sup>1</sup> for an extension to serve his complaint on April 18, 2001, Plaintiff's claim was time-barred because the statute of limitations had already expired, *at a minimum*, 49 days earlier.

As previously briefed and discussed below, several courts have held that the statute of

<sup>1</sup> See Plaintiff's Declaration in Support of Ex Parte Order for Extension of Time to Serve Summons and Complaint ("Plaintiff's Declaration"), ¶ 6.



19

1 limitations is tolled when a complaint is filed<sup>2</sup> Thus, at a minimum, consistent with *Amnay* and  
 2 *Ocasio*, the statute was tolled when Plaintiff filed his complaint on October 30, 2000, the 89<sup>th</sup> day  
 3 after receipt of the EEOC's right to sue letter, and then commenced again on February 28, 2001,  
 4 after Plaintiff's 120 days to serve expired Under *Amnay* and *Ocasio* the statute of limitations  
 5 expired on February 28, 2001, and Plaintiff's April 18, 2001 *ex parte* request for an extension was  
 6 therefore filed 49 days after the statute of limitations expired

7 There is a split in the law on this issue and, indeed, other courts have taken a more  
 8 conservative approach and held that the 90-day statute of limitations is *not* tolled at all upon filing a  
 9 complaint *Wilson v Grumman Ohio Corp.*, 815 F 2d 26, 27 (6<sup>th</sup> Cir 1987) ("we hold that the filing  
 10 of the original [Title VII] complaint did not toll the ninety day period at all, [plaintiff] had neither  
 11 three days nor ninety days to refile after dismissal she was already out of time") Consistent with  
 12 *Grumman Ohio Corp*, therefore, the statute of limitations in this case expired on October 31, 2000,  
 13 90 days after Plaintiff's receipt of the EEOC's right to sue letter Thus, under *Grumman*, at the time  
 14 Plaintiff moved this Court *ex parte* for an extension on April 18, 2001, the statute of limitations had  
 15 expired 169 days earlier Of course, it is irrelevant whether the statute of limitations expired 49 days  
 16 or 169 days earlier because if Plaintiff missed by even one day, his claim is time-barred *Scholar v*  
 17 *Pacific Bell*, 963 F 2d 264 (9<sup>th</sup> Cir 1992) (affirming dismissal of action filed 93 days after receipt of  
 18 EEOC letter and, therefore, 3 days after statute of limitations expired)

19 Accordingly, there is no precedent, statute or rule that can revive Plaintiff's time-barred  
 20 claim While a court has discretion to permit *service of a complaint* after the 120-day period set  
 21 forth in Rule 4(m), a court has no discretion to allow a plaintiff to bring an Americans with  
 22 Disabilities Act ("ADA") claim *after expiration of the 90-day deadline* established in 42 U S C §  
 23 2000e-5(f)(1) *Grumman Ohio Corp*, *supra*, 815 F 2d at 28 ("neither the district court nor this court  
 24 has the power to extend the statutory period")

25 <sup>2</sup> *Amnay v Del Labs*, 117 F Supp 2d 283, 287 (E D N Y 2000), *Ocasio v Fashion Inst of Tech*, 86  
 26 F Supp 2d 371, 375 (S D N Y 2000)

1 Thus, as demonstrated below, and in the prior briefing of Defendant American Airlines  
 2 (“Defendant” or “American”), neither applicable law, the facts of this case, nor the doctrine of  
 3 equitable tolling permits the resuscitation of Plaintiff’s legally moribund action and, as a result, it  
 4 should be dismissed with prejudice

5 **PLAINTIFF FAILED TO COMPLY WITH THE 90-DAY STATUTE OF**  
 6 **LIMITATIONS FOR FILING HIS COMPLAINT AND HIS CASE MUST BE DISMISSED**

7 The requirement to file a civil action within 90 days of receiving an EEOC right to sue letter  
 8 is in every sense a statute of limitations *Pacific Bell, supra*, 963 F 2d at 267 (additional citation  
 9 omitted), *see* 42 U S C § 2000e-5(f) This limitations period applies to claims brought under the  
 10 ADA *See* 42 U S C § 12117(a) (incorporating Title VII enforcement procedures into ADA),  
 11 *Zillyette v Capital One Financial Corp* , 179 F 3d 1337 (11<sup>th</sup> Cir 1999) (it is settled law under the  
 12 ADA that plaintiffs must comply with the same procedural requirements to sue as exist under Title  
 13 VII of the Civil Rights Act of 1964) If a plaintiff fails to file an ADA action within the 90-day  
 14 period, the Plaintiff’s claims are time-barred *See Zillyette, supra* (affirming dismissal of ADA  
 15 claim filed 98 days after receipt of EEOC right to sue letter), *Edwards v Occidental Chemical*  
 16 *Corp* , 892 F 2d 1442, 1445 (9<sup>th</sup> Cir 1990) (filing period is a statute of limitations) The introduction  
 17 of the 120-day service of process deadline in Fed R Civ P 4(m) provides no relief from this filing  
 18 deadline

19 When the Plaintiff timely files an ADA claim, as discussed, some courts have held that any  
 20 remaining portion of the allotted 90 days is tolled *See Amnay, supra*, 117 F Supp 2d at 287 (tolling  
 21 upon filing of complaint), *Ocasio, supra*, 86 F Supp 2d at 375 (same) *But see Grumman Ohio*  
 22 *Corp* , *supra*, (filing of Title VII complaint does not toll 90-day period) Where courts recognize  
 23 tolling, the tolled portion of the 90-day period becomes significant later on if (a) Plaintiff’s claim is  
 24 dismissed without prejudice, or (b) Plaintiff fails to *serve* the complaint within 120 days In the case  
 25 of failure to serve, courts recognizing tolling have held that whatever portion of the 90 days was left  
 26

1 at the time Plaintiff filed his action, begins to run on the 121st day after the complaint was filed  
 2 *Amnay*, 117 F Supp 2d at 287 If the remainder of the original 90 days expires before (1) Plaintiff  
 3 obtains an extension of time to serve from the court, or (2) Plaintiff files a new Original Complaint,  
 4 the ADA claim is untimely and must be dismissed *Id* This is precisely what occurred in the instant  
 5 case

6 As a result, Plaintiff's claim under the ADA had legally expired, *at a minimum*, 49 days  
 7 earlier The fact that Plaintiff sought and obtained an *ex parte* order granting an extension of time in  
 8 which to serve his time-barred complaint is legally irrelevant On April 18, 2001, when Plaintiff  
 9 finally moved this Court for additional time in which to serve his complaint, *the claim had been*  
 10 *time-barred for either 49 days* (in accordance with *Amnay* and *Ocasio*), *or 169 days* (in accordance  
 11 with *Grumman*)

12 In a case directly on point, *Amnay, supra*, a *pro se* plaintiff filed a Title VII complaint within  
 13 90 days of receipt of an EEOC right to sue letter, but failed to serve the complaint within the 120  
 14 days required by Fed. R Civ P 4(m) Exactly like Plaintiff in the present case, the plaintiff in  
 15 *Amnay* tried to serve his complaint after the 90-day statute of limitations had expired<sup>3</sup> The *Amnay*  
 16 court denied the request, stating "[w]hile this Court would be inclined to relieve the consequences  
 17 of the Plaintiff's failure to comply with Rule 4(m), it appears such relief would nevertheless be moot

18 [b]ecause *the Plaintiff's claims are now untimely [and] granting the Plaintiff an extension of*  
 19 *time to attempt to serve Defendants would be futile* " 117 F Supp 2d at 287 (italics added) As in  
 20 *Amnay*, Plaintiff's request for an extension of time under Rule 4(m) was futile because at the time of

21 <sup>3</sup> Plaintiff's representation to this Court that the plaintiffs in *Amnay* and *Ocasio* did not move for  
 22 an extension of time to serve is completely unsupported by any language in the decisions and in any  
 23 event, is irrelevant In fact, both courts considered and denied granting extensions pursuant to Fed  
 24 R Civ P 4 *Amnay*, 117 F Supp 2d at 287 ("Because the Plaintiff's claims are now untimely,  
 25 granting the Plaintiff an extension of time to attempt to serve Defendants would be futile"), *Ocasio*,  
 26 86 F Supp 2d at 377 ("Plaintiff offered no explanation that would have entitled him to an extension  
 of time in which to serve defendants") Plaintiff would apparently have this Court believe that the  
 treatment by the courts of Fed R Civ P 4 in *Amnay* and *Ocasio* was entirely gratuitous Defendant  
 respectfully disagrees Moreover, as *Amnay* held, even had the plaintiff requested an extension it  
 would have been in vain because the statute of limitations expired Plaintiff shares the same fate

1 Plaintiff's motion the statute of limitations had long since expired

2 A similar result occurred in *Grumman Ohio Corp*, *supra*, where plaintiff timely filed her  
3 Title VII complaint within 90 days of receipt of the EEOC's right to sue letter but failed to serve the  
4 complaint within 120 days as required by Fed R Civ P 4. In that case, the district court dismissed  
5 the initial action without prejudice for failure to timely serve the complaint, and then dismissed  
6 plaintiff's subsequent action on the grounds that the statute of limitations had expired. The Sixth  
7 Circuit affirmed, holding that the initial action had *not* tolled the statute of limitations and,  
8 regardless, plaintiff's subsequent action was barred by the statute of limitations. In so holding, the  
9 Sixth Circuit expressly stated that "neither the district court nor this court has the power to extend  
10 the statutory period." 815 F.2d at 28. Of course, the same rule applies here. Plaintiff failed to  
11 timely serve the complaint and by the time the Plaintiff sought an *ex parte* extension to serve the  
12 complaint the statute of limitations had expired. That statutory period cannot be extended and this  
13 case must be dismissed with prejudice.

14 Nowhere in Plaintiff's *ex parte* Motion for Extension of Time to Serve did Plaintiff apprise  
15 this Court of the undisputed fact that the 90-day period in which to file an ADA claim *had expired at*  
16 *least 49 days earlier*. And, because Defendant did not have notice of the action, it was unable to  
17 provide this Court with the appropriate legal authority that governed Plaintiff's request. Indeed,  
18 Plaintiff professes under oath not to know whether his claim is untimely. *See* Plaintiff's Declaration,  
19 at ¶ 5 ("the case is potentially beyond the statute of limitations, if dismissed"). Accordingly, for this  
20 reason alone, Plaintiff's ADA claim must be dismissed with prejudice.<sup>4</sup>

21 **PLAINTIFF'S EX-PARTE MOTION FOR**  
22 **AN EXTENSION TO SERVE HIS COMPLAINT OUT OF TIME**  
23 **AFFIRMATIVELY MISLED THIS COURT AND PREJUDICED DEFENDANT**

24 On July 16, 2001, the date Plaintiff's opposition was due, Defendant learned from Plaintiff's

25 <sup>4</sup> Neither does the rarely used doctrine of equitable tolling provide a safe harbor for Plaintiff in  
26 this case. *See, infra*, at pages 8-9.

1 counsel *for the very first time* that Plaintiff had obtained an *ex parte* order from this Court dated May  
 2 8, 2001, extending Plaintiff's time to serve his complaint. For reasons not entirely clear to  
 3 Defendant, Plaintiff attached to his July 16, 2001 opposition papers only this Court's May 8, 2001  
 4 Order but did *not* attach (1) this Court's March 27, 2001 Order to Show Cause, (2) Plaintiff's April  
 5 18, 2001 Response to Order to Show Cause Why Case Should Not Be Dismissed and Motion for  
 6 Extension of Time for Service of Summons and Complaint, (3) Plaintiff's April 18, 2001 Brief in  
 7 Support of Motion Allowing Extension of Time to Serve Summons and Complaint, and (4)  
 8 Plaintiff's April 25, 2001 Independent Status Report.<sup>5</sup> Because Plaintiff did not attach these relevant  
 9 documents to his pleadings, Defendant was required to obtain these documents independently. Now  
 10 that Defendant has finally had the opportunity to review all of Plaintiff's *ex parte* pleadings, it is  
 11 glaringly apparent that those documents contained representations that were, at best, disingenuous.  
 12 Further, Plaintiff's election to raise these matters in *ex parte* fashion denied this Court the  
 13 opportunity to consider a response from Defendant before ruling, an opportunity which would have  
 14 placed the correct facts and law before this Court to assist it in reaching a decision. Simply put,  
 15 Defendant respectfully suggests that this Court would not have granted Plaintiff's motion had there  
 16 not been material omissions from his pleadings. Plaintiff's deliberate intent to hide material  
 17 information from this Court, and to proceed *ex parte* despite full knowledge of Defendant's agent for  
 18 service, should not be countenanced.

19 Plaintiff's April 17, 2001 Declaration, which was incorporated as part of Plaintiff's Response  
 20 to Order to Show Cause, provides "if the Motion for Extension of Time is not granted, it is unlikely  
 21 that I would be able to refile as the case is potentially beyond the statute of limitations, if dismissed."  
 22 Plaintiff's Declaration, ¶ 5. The statute of limitations for filing an ADA claim is 90 days after  
 23 receipt of an EEOC right to sue letter (indeed, it is expressly so stated in the right to sue letter itself).

24 <sup>5</sup> Plaintiff's April 25, 2001 "Independent Status Report" submitted in response to this Court's  
 25 March 27, 2001 Order for a *Joint* Status Report is yet further evidence of Plaintiff's deliberate intent  
 26 not to provide Defendant with relevant pleadings in order that Plaintiff might obtain *ex parte* relief  
 from this Court.



1 Even a cursory examination of the facts and applicable dates could leave no doubt that the statute  
 2 had long since expired by April 17, 2001, at the latest, it expired (in accordance with the most liberal  
 3 authority) on February 28, 2001 Plaintiff's sworn statement that "the case is potentially beyond the  
 4 statute of limitations," made without any discernable reference to either rule book or calendar,  
 5 affirmatively hid from this Court the fact that the statute had already expired

6 Moreover, Plaintiff's April 17, 2001 Declaration also provides that "I do not anticipate any  
 7 significant delay in serving AMERICAN AIRLINES if the Court does allow such service at this  
 8 time as AMERICAN AIRLINES has a registered agent locally upon whom service can be  
 9 effectuated " Plaintiff's Declaration, ¶ 6 Thus, fully aware of both the existence and identity of  
 10 Defendant's registered agent, Plaintiff deliberately elected not to serve Defendant, choosing rather to  
 11 seek an extension on an *ex parte* basis In so doing, Plaintiff denied Defendant, and ultimately this  
 12 Court, the opportunity to consider binding legal precedent in connection with the facts of this case  
 13 Accordingly, in view of Plaintiff's inappropriate action in misleading this Court, and deliberately  
 14 doing so in such a way as to preclude any opposition, this action should be dismissed with  
 15 prejudice <sup>6</sup>

16 **PLAINTIFF'S ALLEGATION THAT DEFENDANT**  
 17 **HAS WITHDRAWN ITS PREJUDICE ARGUMENT IS ERRONEOUS**

18 Plaintiff also speciously argues that, because the EEOC fortuitously located his file after

19  
 20 <sup>6</sup> Ignoring his own duplicity in proceeding *ex parte*, Plaintiff represents that this Court properly  
 21 exercised its discretion in extending his time to serve pursuant to Fed R Civ P 4 Plaintiff's  
 22 *Response to Defendant's Motion to Dismiss*, p 5 In so arguing, Plaintiff relies upon *Henderson v*  
 23 *US*, 517 U S 654 (1996) and *De Tie v Orange County*, 152 F 3d 1109 (9<sup>th</sup> Cir 1998) for the  
 24 general proposition that a court has discretion to extend time to serve, even absent a showing of good  
 25 cause The cited case law, however, does *not* advance Plaintiff's case The issue is not whether a  
 26 court may grant an extension absent a showing of good cause, or even whether a court may grant  
 such relief in appropriate circumstances where an applicable statute of limitations would bar the  
 refiled action Rather, the issue is whether such relief is appropriate in *this* case The answer is,  
 "No," because the statute of limitations had already expired at least 49 days before the Plaintiff  
 requested his extension Binding legal precedent provides that under *these* facts, dismissal is the  
 appropriate remedy

1 initially stating that the file had been destroyed, Defendant has somehow withdrawn its prejudice  
 2 argument Although the law does not require Defendant to demonstrate prejudice, for the reasons set  
 3 forth below it is obvious that Defendant has been prejudiced, and Defendant is not withdrawing its  
 4 argument

5 First, regardless of whether the EEOC file surfaced, any requirement that American defend  
 6 itself against a claim in which the statute of limitations has expired is prejudice *per se*

7 Second, Plaintiff's allegations of discrimination date back to 1992 Plaintiff received his  
 8 right to sue letter in July of 2000 Plaintiff did not serve his complaint within the 120 days provided  
 9 by Fed R Civ P 4 and, further, allowed the statute of limitations to expire Thus, Plaintiff's  
 10 inattention and apathy has permitted yet another year to go by with respect to this 9 year-old claim  
 11 With each passing day, witnesses relocate, forget what they knew, or become unavailable  
 12 Defendant is inherently prejudiced in having to litigate this 9 year-old case even one day later than  
 13 necessary

14 Third, while Plaintiff has not relied on the doctrine of equitable tolling, the doctrine is plainly  
 15 unavailable in any event Although a statute of limitations is potentially subject to the doctrine of  
 16 equitable tolling, Plaintiff here cannot avail himself of this doctrine because equitable tolling (and  
 17 the consequent relief from the strict construction of a statute of limitations) is available only in  
 18 "extreme cases," and is "applied sparingly " *Pacific Bell*, 963 F 2d at 268 (emphasis added),  
 19 *Grumman Ohio Corp* , *supra*, 815 F 2d at 28 ("equitable tolling is not 'an escape valve through  
 20 which jurisdictional requirements will evaporate since the tolling of the statutory periods on  
 21 equitable grounds is usually very much restricted'") (citation omitted) Indeed, the facts of this case  
 22 show it to be anything but extreme, and render the doctrine inapplicable

23 The Supreme Court has identified the following examples of cases in which equitable tolling  
 24 is warranted (1) where the statute of limitations is not met because of excusable neglect, such as  
 25 filing papers in the wrong court or bringing a defective class action, (2) where a claimant is



1 affirmatively misled or tricked by an adversary into letting a deadline expire, and (3) where the  
 2 EEOC's notice of the statutory period is defective *Id* (citing *Irwin v Veterans Admin*, 498 U S 89  
 3 (1990), *Baldwin County Welcome Ctr v Brown*, 446 U S 147 (1984) (per curiam)) Importantly, in  
 4 each of these examples, the statute had *not* expired at the time of the tolling event Moreover, all of  
 5 the foregoing examples are inapposite because: (1) this is not an "extreme case," but rather a  
 6 straightforward failure to comply with statutory and procedural rules, and (2) the 90-day filing  
 7 deadline had long since expired at the time relief was requested Accordingly, equitable tolling is  
 8 inapplicable here

9 Moreover, the Supreme Court has made clear that the absence of prejudice is *not* an  
 10 independent basis which would trigger equitable tolling, and does not support invocation of the  
 11 equitable tolling doctrine unless the party first demonstrates that it meets the criteria established to  
 12 render this rarely applied doctrine operative

13 Although absence of prejudice is a factor to be considered in  
 14 determining whether the doctrine of equitable tolling should apply  
 15 *once a factor that might justify such tolling is identified*, it is not an  
 independent basis for invoking the doctrine and sanctioning deviations  
 from established procedures

16 *Baldwin County Welcome Center*, 466 U S at 152 (emphasis added)

17 In other words, before Plaintiff may rely on some alleged absence of prejudice to revive his  
 18 case, he must first establish that his is an "extreme case," falling within the limited exceptions  
 19 provided by the Supreme Court in which variance from strict compliance with the statute of  
 20 limitations is permitted As convincingly demonstrated above, this case simply does *not* fall within  
 21 the Supreme Court's notion of the exceptional case

22 Fourth, the fact that the EEOC fortuitously located a file that should have been destroyed  
 23 under EEOC's normal document retention policy (EEOC files are destroyed 6 months after final  
 24 agency action, *see* Exhibit 2 to Defendant's Opening brief), is also not sufficient to defeat  
 25 Defendant's motion Loss of potentially exculpatory documentation is but one example of the type  
 26

1 of prejudice Defendant will incur in defending against this extremely old claim While the EEOC's  
 2 file has now surfaced, Defendant simply has no way of knowing what other documents, witnesses,  
 3 and evidence may be unrecoverable Moreover, the rationale underlying statutes of limitations and  
 4 their consistent enforcement is utterly unaffected by the operation of chance in this or any other case  
 5 For these further reasons, Defendant's motion should be granted and Plaintiff's complaint should be  
 6 dismissed with prejudice

7 **THE LAW REQUIRES PRO-SE PLAINTIFFS TO COMPLY WITH**  
 8 **APPLICABLE STATUTES OF LIMITATIONS AND PROCEDURAL RULES**

9 At the time that Plaintiff filed (and failed to serve) his original action he was appearing *pro*  
 10 *se* However, and significantly, statutes of limitation and the Federal Rules of Civil Procedure are  
 11 neither waived nor suspended for *pro se* plaintiffs On the contrary, numerous courts have dismissed  
 12 cases brought by *pro se* plaintiffs under facts similar to the case at bar For example, both *Ocasio*,  
 13 86 F Supp 2d 371, and *Amnay*, 117 F Supp 2d 283, involved *pro se* plaintiffs See also *Williams-*  
 14 *Guice v Board of Educ*, 45 F 3d 161, 164 (7<sup>th</sup> Cir 1995) (plaintiff's *pro se* status does not shield  
 15 him from the effects of his own negligence or apathy)

16 Indeed, the Supreme Court, in dismissing a *pro se* plaintiff's Title VII action for failing to  
 17 file a complaint within 90 days of receipt of the EEOC's right to sue letter, stated "procedural  
 18 requirements established by Congress for gaining access to the federal courts are not to be  
 19 disregarded by the courts out of a vague sympathy for particular litigants," because "in the long run,  
 20 experience teaches that strict adherence to the procedural requirements specified by the legislature is  
 21 the best guarantee of evenhanded administration of law '" *Baldwin County Welcome Center, supra*,  
 22 466 U S at 152 (quoting *Mohasco Corp v Silver*, 447 U S 807, 826 (1980)) If the rules are not  
 23 enforced uniformly, *pro se* plaintiffs, or counsel who are waiting in the wings to come into a case  
 24 and represent them, could grant themselves unlimited extensions of statutory deadlines and blithely  
 25 bypass federal procedural rules Courts, including the Supreme Court, recognizing the havoc and  
 26

1 injustice such precedent would create, have resisted the temptation to create a *pro se* exception to  
2 statutory deadlines and procedural rules *See e g , Baldwin County Welcome Center, Ocasio,*  
3 *Amnay, supra* Accordingly, Defendant respectfully urges the Court to grant Defendant's motion  
4 and dismiss Plaintiff's complaint with prejudice


5 **CONCLUSION**

6 Based on the foregoing, and for the reasons previously briefed, Defendant American Airlines  
7 respectfully moves this Court to dismiss Plaintiff's Original and First Amended Complaints with  
8 prejudice for failure to file suit within the statutory deadline  
9

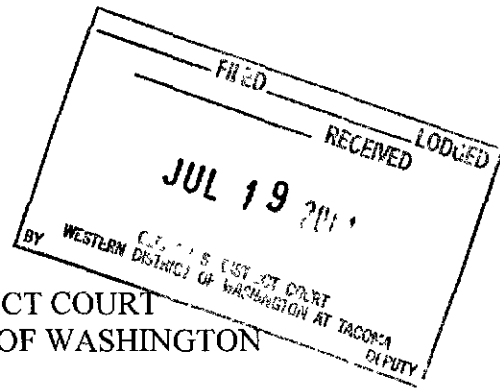
10  
11 Dated July 19, 2001

12 LITTLER MENDELSON, P C

13  
14 By

  
Robert K. Carrol, WSBA # 28150  
James G Zissler, WSBA #30287  
Attorneys for Defendant

Honorable Franklin D Burgess



UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RODERICK C MANN,

Plaintiff,

v

AMERICAN AIRLINES,

Defendant

Case No C00-5641-FDB

**CERTIFICATE OF SERVICE**

I am a resident of the State of Washington, over the age of eighteen years, and not a party to the within action. My business address is 999 Third Avenue, Suite 3900, Seattle, WA 98104. On July 19, 2001, I served the within document(s)

**REPLY IN SUPPORT OF MOTION TO DISMISS; CERTIFICATE OF SERVICE**

☐ by facsimile transmission at or about \_\_\_\_\_ on that date. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.

☐ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Seattle, Washington addressed as set forth below.

Certificate of Service - 1

SEATTLE 17623 1 009001 1235

ORIGINAL

JAMES G ZISSLER, WSBA #30287  
LITTLER MENDELSON PC  
999 THIRD AVENUE, SUITE 3900  
SEATTLE, WA 98104  
PHONE 206 623 3300  
FAX 206 447 4965

1 ☐ by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided  
2 for, in an overnight delivery service pick up box or office designated for overnight delivery, and  
addressed as set forth below

3 ☒ by delivering copies of the documents listed above into the hands of a messenger service with the  
4 instructions to deliver on this date said documents to the person at the address set forth below

5 Douglas R. Cloud, Attorney  
6 901 South "I" Street, Suite 101  
Tacoma WA 98405

7 I am readily familiar with the firm's practice of collecting and processing correspondence for  
8 mailing and for delivery via messenger service. Under that practice, it would be deposited with the  
9 U S Postal Service or, if an overnight delivery service shipment, deposited in an overnight delivery  
10 service pick-up box or office on the same day with postage or fees thereon fully prepaid in the  
11 ordinary course of business

12 I declare under penalty of perjury under the laws of the State of Washington that the above is  
13 true and correct. Executed on July 19, 2001, at Seattle, Washington

14  
15   
16 Lisa Hoveland  
17  
18  
19  
20  
21  
22  
23  
24  
25